

DECLARATION OF HOWARD MCNALLY

1. I am Director, Opportunity Management Center for Business Communications Services for American Telephone and Telegraph Company ("AT&T"). I am responsible for the strategic pricing of AT&T's network services. My responsibilities include managing the collection and assessment of information about offerings by AT&T's competitors to business customers, and the development of AT&T's responses to such offerings. In this capacity, I have become thoroughly familiar with the vigorous competition between AT&T and its interexchange competitors, including MCI and Sprint, for the provision of service to large business customers, and with the competitive harm to AT&T caused by the refusal of AT&T's competitors to file many of their rates.

2. I make this declaration in support of AT&T's Application for Stay Pending Appellate Review of the FCC's recent Order, which permits AT&T's competitors to avoid the ratefiling requirements of the Communications Act by filing tariffs containing only a range of rates, but not stating the specific rates they charge. In this declaration, I present evidence which demonstrates (a) that despite numerous decisions establishing the unlawfulness of such conduct, AT&T's competitors, including Sprint and MCI, have provided service to many customers at rates that are not published in, and cannot be ascertained from, their filed tariffs, (b) that these carriers' failure to file their rates, and related terms and conditions, for all their services has injured AT&T and placed it at a severe competitive disadvantage, (c) that the FCC's Range Tariff Order would permit

carriers who compete with AT&T to continue or reestablish that practice, and (d) that the injury AT&T will suffer if the Range Tariff Order is not stayed may not be fully compensable by a future legal action for damages.

3. Knowledge of the rates, and related terms and conditions, at which competitors are offering service is invaluable to any carrier in structuring and negotiating the sales of its own offerings. Because AT&T publishes all its rates, and all the terms and conditions affecting those rates, in tariffs filed with the FCC, AT&T's competitors have ready access to the full range of information on AT&T's offerings. AT&T, in contrast, has not had any comparable source of information on many of its competitors' offerings.

4. For example, Sprint has engaged in a long-standing practice of providing customers, including large business customers, with services at rates which are not specified in any tariff, and prohibiting its customers from disclosing its secret rates to third parties. Sprint, in fact, continues to engage in such conduct to this day.

5. In particular, Sprint provides to many of its customers, including its largest business customers, certain services, which it calls "bulk service agreements," for which it has failed to file its rates, both in the past and continuing to the present. Sprint's tariffs do not specify any rates or rate structure for these "bulk service agreements," but instead merely state that Sprint may provide volume or promotional discounts "of up to 10% or greater" off its tariffed rates. This language, on

its face, authorizes discounts of anywhere from 0% to 100%, with no indication of what level of discount, or for that matter what rate structure, Sprint in fact provides any customer. Another section of Sprint's tariff indicates that Sprint will offer state governments, as well as state and private universities, completely unspecified volume discounts which are "based on aggregate volumes and will vary by rate period." In other words, the terms of Sprint's tariff ensure that no actual rates, or terms and conditions of service affecting those rates, can be ascertained from it.

6. Similarly, MCI provides to many of its customers, including its largest business customers, certain services, which it calls "specialized customer arrangements," for which it has in the past failed to file its rates. MCI has also entered into non-disclosure agreements with those customers prohibiting them from revealing the rates and terms under which they receive MCI's service.

7. Prior to January of 1993, MCI filed no tariffs at all describing the rates charged for its "specialized customers arrangements." After that date, and in response to a decision of the Court of Appeals, MCI made minor modifications to its tariff and included a section on "specialized customer arrangements." That section, however, was meaningless; it was impossible to determine from that section what rates and rate structures MCI was actually applying to any customer. The section contained several provisions which ensured that no actual rates, or terms and conditions of service affecting those rates, could be

ascertained from it, such as a provision expressly authorizing it to "waive[] [unspecified] tariffed charges."

8. MCI only ceased these practices, and began filing tariffs specifying all of its rates, after the United States District Court ordered it to comply with its ratefiling requirements.

9. Many of AT&T's competitors in addition to MCI and Sprint provide services at untariffed rates. In particular, several of AT&T's competitors, including LDDS Communications, Inc., and Cable & Wireless Communications, Inc., have filed tariffs which state only "maximum" rates, but do not even claim to specify the actual rates charged for their services. Another competitor, Metromedia Communications Corporation, has filed tariffs whose provisions permit it to "offer discounts of up to 25% off selected rates and . . . waive installation charges appearing in this tariff," without any means of ascertaining the actual discount provided any customer, or even the circumstances in which a discount will be provided.

10. The above-described practice of AT&T's competitors of refusing to file tariffs from which all of their rates, and related terms and conditions, can be ascertained continues to the present. In fact, many of AT&T's competitors have failed to file all of their rates even in the wake of numerous judicial decisions holding such conduct to be unlawful under the Communications Act, including the two recent decisions of the Court of Appeals holding unequivocally that all carriers must file all of their rates, and that the FCC cannot excuse carriers

from that obligation. Sprint, for example, has left in place to the present its tariff permitting it to give unlimited, and unspecified, discounts. Cable and Wireless filed tariffs in February of 1993 which state only maximum rates, but do not specify rates actually charged. And as stated above, MCI originally filed tariffs in January of 1993 which completely failed to specify all of its rates and terms and conditions. MCI left those tariffs in place even in the face of a Cease and Desist Order from the FCC, and only began to file its rates when it was ordered to do so in July of 1993 by a court-issued injunction.

11. The refusal of AT&T's competitors to file their rates and related terms and conditions has given them substantial and unfair competitive advantages over AT&T in structuring and pricing their offerings and negotiating with customers. These competitors can match or undercut the rates that AT&T has filed, while AT&T is often unable even to ascertain what they are charging. Other carriers can also predict future AT&T proposals with greater accuracy than AT&T can for their offerings. And AT&T's competitors can circumvent the requirement that all their offers be made available to similarly situated customers, because only the customers they choose to inform will be aware that a particular rate or rate structure is available.

12. I understand that the FCC has recently issued an Order which purports to permit AT&T's competitors to meet their ratefiling requirements by filing only a "reasonable range of rates." The overriding reality, however, is that the filing of a

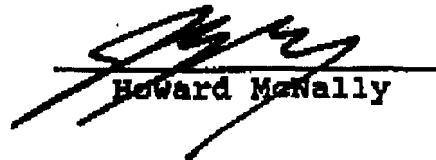
range of rates does not reveal the actual rates a carrier charges. The net effect of this Order will therefore be to continue (or in some cases recreate) the unfair competitive disadvantages under which AT&T has been forced to operate.

13. As stated above, AT&T's competitors have not complied with their ratefiling requirements despite numerous Court of Appeals decisions stating that they must, and despite the threat of damages actions brought by AT&T or their customers. There is therefore every reason to believe that if the FCC's Order is not stayed, these competitors will take maximum advantage of the Order in evading their obligation to file rates for all of their services.

14. The competitive injury which AT&T is suffering, and will continue to suffer if the FCC's Order remains in force, may not be fully compensable by a future legal action to recover money damages. While some of the financial injury suffered by AT&T as a consequence of its competitors' legal violations are concrete and quantifiable, including some costs and some lost profits from business AT&T would otherwise have obtained, it is difficult if not impossible to quantify all of the huge costs imposed on AT&T as a result of the informational disparity between it and its competitors.

15. Finally, I understand that MCI has now asked that the injunction issued against it on July 7, 1993 be lifted as a result of the Range Tariff Order. That injunction should not be dissolved under any circumstances, and I understand that AT&T is opposing MCI's request. But if the injunction is dissolved, MCI would undoubtedly return to its practice of refusing to file many of its rates, with all the consequent injury to AT&T.

16. I declare under penalty of perjury that the foregoing is true and correct.



Howard McNally

Executed on September 7, 1993

CERTIFICATE OF SERVICE

I, Hagi Asfaw, do hereby certify that on this 7th day of September, 1993, a copy of the foregoing Application for Stay of Order Pending Appellate Review of American Telephone and Telegraph Company was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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